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Forty-fifth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 1057th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 11 August 1994, at 10 a.m.

Chairman: Mr. GARVALOV

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* The summary record of the second part (closed) of the meeting appears as document CERD/C/SR.1057/Add.1.

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The meeting was called to order at 10.15 a.m.

PREVENTION OF RACIAL DISCRIMINATION, INCLUDING EARLY WARNING AND URGENT PROCEDURES (agenda item 6) (continued)

1. Mr. ABOUL-NASR drew attention to a news item he had heard on the radio to the effect that the Sub-Commission on Prevention of Discrimination and Protection of Minorities had adopted a decision the previous day concerning the establishment of an early warning system in the field of racial discrimination. Since that matter was directly related to the Committee's work, there might be scope for coordination with the Sub-Commission, through the Committee member responsible for liaison with that body, in order to ascertain the accuracy of that report, ensure that the Committee was fully informed and avoid duplication of efforts between the two bodies.

2. The CHAIRMAN said that it was important for the Committee to be aware of any such developments. He was sure that Mr. Ferrero Costa, whose mandate for liaison with the Sub-Commission had been extended, together with the similar mandates of other Committee members, would contact the Sub-Commission and inform the Committee accordingly. Prior to the Committee's session, he himself had written a formal letter to the Chairman of the Sub-Commission suggesting a meeting to discuss the possibility of a joint meeting between the two bodies in 1995 and related issues; the topic under consideration could be discussed as a related issue if his suggestion were accepted.

3. Mr. WOLFRUM reported by way of further information that, at a meeting of the Sub-Commission the previous week, one of its members had openly challenged the Committee's mandate to deal with early warning measures, which he said fell within the competence of the Sub-Commission. He therefore urged caution when entering into negotiations with the Sub-Commission, whose intentions were different from the Committee's, and warned against embarking on a futile controversy over questions of competence.

4. The CHAIRMAN said that he took very strong exception to any such statement by a member of the Sub-Commission, pointing out that the document adopted by the Committee at its forty-second session on early warning measures and urgent procedures had been approved by the General Assembly and subsequently by the States parties; the Secretary-General had, moreover, expressed appreciation for the Committee's work in that regard. The Committee was competent to decide on its own procedures; it had never challenged the competence of the Sub-Commission and it was not for the latter to challenge that of the Committee.

5. Mr. YUTZIS said that the information provided by Mr. Aboul-Nasr warranted further attention. Three points should be borne in mind: the need to reconsider the Committee's channels of communication with other United Nations human rights bodies dealing with issues relevant to the Committee's concerns; the need to rationalize the various bodies' mandates and methodologies in order to avoid duplication; and the specific nature of the early warning systems considered by the various bodies.

6. Regarding the reported assertions made at the Sub-Commission meeting, the risk of involvement in competition with the Sub-Commission might detract from the effectiveness of the Committee's and the Sub-Commission's work. The matter must therefore be approached with caution, perhaps through the Chairman and the appropriate contact persons.

7. Mr. FERRERO COSTA stressed the importance of the matter and expressed his willingness, as the member of the Committee responsible for liaison with the Sub-Commission, to investigate the reported developments in the Sub-Commission, inter alia through the Secretariat, and to report to the Committee the following week. In the light of his findings, the Committee might consider taking official steps, such as arranging for a meeting between the two Chairmen. His recommendation was that the Committee should obtain further information before proceeding further.

8. Mr. AHMADU said he knew from his personal contacts with the Chairman of the Sub-Commission that she, at least, considered the work of the two bodies in dealing with the situation of indigenous populations to be complementary. She had, moreover, urged him to take up the matter of early warning action in respect of Burundi within the framework of the Committee, the Sub-Commission having failed to agree on such action. The meeting between the two Chairmen was urgently needed in order to exchange information.

9. Mr. SHAHI said that, before adopting a position, the Committee should await information from Mr. Ferrero Costa as to whether the reported statement in the Sub-Commission was an individual opinion or a considered view of the Sub-Commission. In any event, views expressed in the Sub-Commission did not affect the Committee's proceedings. The Committee was competent to make its own interpretations of the Convention, and it did so in the form of general recommendations, which had raised no objections among States parties.

10. He reminded the Committee that he had represented it at four preparatory meetings of the World Conference on Human Rights, on which he had reported in full to the Committee. At the preparatory meetings, he had secured the support of several other human rights treaty bodies for the early warning measures and urgent procedures adopted by the Committee; as a result, they had jointly submitted an amendment to the final Declaration of the World Conference to that effect. Although that amendment had not finally been adopted, the earlier version of the preparatory draft, which had included a reference to early warning and urgent procedures, could no doubt be traced by the Secretariat. The competence of the Committee in that matter and the early warning procedures and action it recommended had, moreover, been endorsed by the Secretary-General.

11. Mr. SHERIFIS said that it would be both futile and demeaning to engage in an exchange of criticism with the Sub-Commission or give the impression that there was some kind of competition between the two bodies. The situation that had arisen prompted him to comment that the simultaneous scheduling of sessions of human rights bodies with similar areas of competence was unfortunate. It affected conference servicing and, more importantly, meant that the same issues were being discussed at the same time, leading to false comparisons. Ways must be found of establishing a friendly dialogue between the two bodies. Although it had proved difficult to organize joint plenary

meetings, it would be desirable and should be possible to arrange for meetings between the two Chairmen and the two Bureaux. Such meetings would help to avoid misunderstandings and enable the two bodies, which were striving for the same objectives, to fulfil their respective mandates.

12. The CHAIRMAN endorsed those views, including the idea of a meeting between the Bureaux. The Committee was not in competition with any other body, least of all the Sub-Commission, which it held in high esteem, but was endeavouring to discharge its mandate successfully.

13. Mr. RECHETOV agreed that it was pointless and beneath the Committee's dignity to engage in polemics or rivalry with the Sub-Commission. The two bodies addressed the same issues, each in its own field of competence, which was for them to determine. It was of paramount importance that any initiatives taken by the Sub-Commission on a subject of mutual concern should be brought to the Committee's attention.

14. The general terms of the Committee's mandate were covered by article 2 of the Convention. Prevention clearly fell within that mandate. Crucial to the impact of the Convention and of the Committee's work worldwide, however, was the specific, substantive action it took. The Committee should therefore focus on improving the effectiveness of its work, especially in new areas in which it agreed that practical measures should be taken. The matter under discussion prompted him to raise the question of reports. The Sub-Commission produced a large number of reports on a variety of subjects which were not always very comprehensive and might have benefited from the experience of the Committee. He wondered whether the Committee, without of course supplanting the Sub-Commission in that regard, might not also prepare reports on topics within its competence. It certainly had the expertise to do so. A subject that was of particular interest to him and would undoubtedly be increasingly a focus of the Committee's attention was the relationship between freedom of opinion and incitement to racial discrimination.

15. In conclusion, he appealed for the establishment of good relations with the Sub-Commission and endorsed Mr. Sherifis' proposal that a meeting between the Bureaux of the two bodies should be arranged.

16. Mr. de GOUTTES said that the question of the validity of the early warning and urgent procedures adopted by the Committee was a key issue. He recalled the arduous discussions over the drafting of the document on those procedures and the Committee's recognition of its important and innovative nature. It would be remembered that the initiative had been largely inspired by the Secretary-General's ideas on preventive diplomacy in the field of human rights and his report entitled "An agenda for peace". As others had said, the document had received support from the General Assembly and at the World Conference on Human Rights; further support had been expressed only recently by the Assistant Secretary-General for Human Rights. The Committee had already taken action under those procedures with respect to Kosovo and Croatia, had requested urgent additional information from several countries and would shortly be discussing the situation in Burundi. It was important to safeguard what were now established procedures.

17. It was ironic that, just as the Committee's early warning and emergency procedures were beginning to show results, other bodies were beginning to criticize them. It was, however, pointless to quarrel with the Sub-Commission; in any case, not all members of the Sub-Commission disapproved of the Committee's actions. For example, Mr. Eide, Special Rapporteur of the Sub-Commission on possible ways and means of facilitating the peaceful and constructive solution of problems involving minorities, had said that the Committee was in a good position to notice when the situation in a country was developing dangerously and required urgent examination.

18. He agreed with Mr. Ferrero Costa that a meeting should be arranged between the Chairmen of the two bodies as quickly as possible. The original plan had in fact been to hold such meetings, and they might have prevented the present misunderstanding. The Committee must also decide whether to amend its rules of procedure to maximize the effect of the early warning and emergency procedures. It would be useful to hear from the Secretariat whether other committees had adopted similar procedures, and how they had been used. It was essential to consolidate the achievements made so far and plan new initiatives for the future.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 5) (continued)

Israel: information requested under article 9, paragraph 1, of the Convention (continued)

19. Mr. YUTZIS noted that the Israeli authorities had described the massacre of Palestinians at the Tomb of the Patriarchs (Mosque of Ibrahim) in Hebron on 25 February 1994 as an "isolated incident". There had been so many "isolated incidents" in Israel's recent history that they surely no longer justified that description. Mr. van Boven's laudable analysis of the situation had referred to the tacit social approval of such acts, which surely encouraged others to emulate them. The incident showed, once again, the potential dangers associated with the Israeli policy of establishing Jewish settlements in the occupied territories, which the Committee had pointed out in the past.

20. It was regrettable that the Israeli Government had failed to send a representative to take part in the Committee's discussion. The Jewish nation had been subject to persecution for over 2,000 years, and any moves to reduce racial discrimination were surely in its interests. The Committee should convey its regrets to the Government of Israel and request further information about any changes in Israeli attitudes towards non-Israeli citizens. The Committee might also ask what measures the Israeli Government had adopted in the fields of teaching, education, culture and information in order to counter discrimination against Palestinians, in accordance with article 7 of the Convention. Finally, the Committee might ask about any changes in Israeli opinion on the settlements issue.

21. Mr. LECHUGA HEVIA agreed that the Committee should not accept the reasons given by the Israeli Government for its failure to send a representative to address the Committee. There was no doubt about the Committee's competence to monitor the implementation of the Convention in the occupied territories.

Israel, the occupying Power, was a State party to the Convention, and it could not choose to implement the Convention in one part of the territory under its jurisdiction, and not in another. The documents which Israel had sent were not an adequate response to the Committee's request for further information: the Committee should request a proper report immediately.

22. Mr. SONG Shuhua said that the absence of an Israeli representative would affect the normal process of dialogue between the Committee and States parties. He welcomed Mr. van Boven's analysis of the situation, which had provided a clear and scientific interpretation of the facts. The Hebron massacre had been a tragic event. As a party to the Convention, Israel must fully implement all its provisions: the Committee was certainly competent to request information about the situation in the occupied territories.

23. Mrs. SADIQ ALI regretted the absence of an Israeli representative at the debate, and hoped that the Israeli Government would take note of Mr. van Boven's lucid analysis of the situation. She considered that Israel should report as soon as possible to the Committee on its measures to guarantee the safety of Palestinians in the occupied territories, disarm the settlers and put an end to their illegal activities. New settlements were still being established, which would only increase the potential for violent acts by settlers, deepen Palestinian insecurity and lead to the institutionalization of racial discrimination.

24. Mr. van Boven had drawn attention to the double standards followed by the Israeli authorities in their treatment of Jewish settlers and Palestinians in respect of legal redress for violations of human rights; she could see the same double standards in respect of public services and personal security. Israel was a State party to the Convention and had an obligation to answer the Committee's questions.

25. Mr. VALENCIA RODRIGUEZ pointed out that the Israeli Government had actually replied to the Committee's request, although it had not provided the required information. The Committee's next communication should stress that it was competent to request such information. Israel's obligations under the Convention extended to all the territories under its jurisdiction, including the occupied territories, and it had clearly failed to fulfil its obligations under article 5 (equality before the law and protection by the State) in respect of the victims of the Hebron massacre.

26. The Commission of Inquiry appointed by the Israeli Government had itself acknowledged the inadequacy of security measures at the Tomb of the Patriarchs, where both Jews and Muslims came to worship. It had also acknowledged that the double standards used by the Israeli authorities in their treatment of Palestinians and settlers had been one of the factors behind the massacre. The measures advocated by the Commission of Inquiry might prevent the recurrence of such a tragic incident; he welcomed the Israeli cabinet's decision to implement the Commission's recommendations. The Committee should ask the Israeli Government what compensation had been awarded to the victims or their next of kin in accordance with article 6 of the Convention.

27. The Committee should convey to the Israeli Government its satisfaction at the Government's decision to ban certain extremist groups, and call upon it to ban all other such groups. It should ask that Government what measures were being taken to promote the security of all the people under Israel's jurisdiction, both in Israel itself and in the occupied territories. Finally, the Committee should express its hopes for a permanent solution to the conflict, and ask to be kept informed of progress in the current peace negotiations.

28. Mr. FERRERO COSTA said the general consensus seemed to be that the Committee should adopt a decision or draft a letter to the Israeli authorities, making a number of points. Firstly, the Committee should clearly state that it was competent to examine the situation in the occupied territories: many articles of the Convention, for instance, articles 3, 6 and 14, referred to persons within the "jurisdiction" of a State party, with no reference to "absolute sovereignty" or a similar concept. The Committee was also competent to request specific additional information if necessary. Secondly, the Committee should deplore the absence of an Israeli representative at the debate. Thirdly, the Committee should note the documents submitted by the Israeli Government, but point out that they did not form an adequate response to its request, and should call upon the Israeli Government to provide more detailed information.

29. Fourthly, the Committee should make it clear that the Israeli Government was responsible for ensuring the protection and equality before the law of all people under its jurisdiction, and thus bore the ultimate responsibility for the Hebron massacre.

30. Fifthly, the Committee should point out that Israel had an obligation under article 5 to eliminate racial discrimination in all its forms. Even though article 5 did not specifically mention persons under the "jurisdiction" of Israel, it did not mention any more restrictive term, such as "sovereign territory", and could therefore be considered to have the broadest possible application.

31. Sixthly, the Committee should ask what measures the Israeli Government had adopted to implement its obligations under the Convention and, in particular, what compensation had been paid to victims of the Hebron massacre or their next of kin.

32. Mr. Valencia Rodriguez had mentioned two further points, namely, the banning of certain extremist organizations and the Committee's hopes for the success of the current peace negotiations, but he was not sure whether the inclusion of those two points had met with general approval.

33. It was not the first time that the Committee's competence to examine the situation of residents in the occupied territories had been challenged. In his opinion, it was a matter of principle, which should be settled by a general recommendation showing the Committee's own interpretation of the scope of the Convention.

34. Mr. BANTON said that he had recently read in the press about a fund established by the deputy mayor of Jerusalem to provide a reward for the assassination of Mr. Yasser Arafat, and that other statements had been made which appeared to constitute incitement to murder. If prominent people could make such statements with impunity, that might intensify any climate of hatred, in which violent acts became increasingly possible. Perhaps that concern could be added to those expressed in the communication to the Israeli Government.

35. He agreed that the communication should stress the competence of the Committee to consider the situation in the occupied territories and express some appreciation of the information submitted by the Israeli authorities, limited though it was. He agreed with previous speakers that the situation was not as serious as it had seemed when the Committee had sent its original request for information. The Committee should point out that it was still awaiting the detailed information it had requested, including data on the measures taken by Israel to guarantee the equality and protection of Palestinians in the occupied territories. The communication should also point out that the establishment of Jewish settlements was illegal under international law and a threat to peace and security in the region.

36. He was not so concerned as other members about the absence of an Israeli representative which, he felt, hurt Israel more than it hurt the Committee.

37. Mr. SHAHI said he fully supported Mr. van Boven's view that the circumstances surrounding the massacre at the Tomb of the Patriarchs in Hebron might be of too fundamental a nature for examination by the Commission of Inquiry, as an investigative body, and related to the basic problem of the occupation of Palestinian territories.

38. The question of jurisdiction should be seen in the framework of General Assembly and Security Council resolutions according to which, under the Geneva Convention relative to the Protection of Civilian Persons in Time of War, Israel's jurisdiction was that of an occupying, not a sovereign Power. The Committee's ultimate decision or observations should reflect that situation and emphasize Israel's responsibility as an occupying Power to ensure the protection of Palestinians in the same way as Jewish settlers.

39. The CHAIRMAN, speaking as a member of the Committee, said he agreed that the Committee was competent to ask for and consider additional information from Israel under the terms of the Convention. Although he understood Israel's views on the competence of the Committee, he could not agree with them. It was unfortunate that representatives of Israel had chosen not to take part in the Committee's consideration of the information on the massacre at Hebron and had confined itself to transmitting documents to the Committee's Chairman, thus breaking with established practice.

40. However, the Committee now had to decide how to proceed. It was of the utmost importance that a dialogue should be re-established with Israel and the Committee should acknowledge the courageous stand taken by both the Government of Israel and the Palestine Liberation Organization in the face of considerable opposition.

41. Mr. van BOVEN (Country Rapporteur) said it was essential to impress upon the Government of Israel that the Committee's request for additional information was not born of political considerations. The Committee was a body of experts, not a political decision-making body. Its request for information had been prompted by concern that suffering such as had occurred at Hebron should be prevented in the future. Recent experience had highlighted the importance of the preventive approach. The Committee attached great importance to the ongoing peace process in the Middle East and hoped that the Convention could make a valuable contribution to lasting peace.

42. Mr. ABOUL-NASR said that he hoped Mr. van Boven would draft a document which could be submitted for discussion by the Committee. The tone of the text should resemble that used for other countries' reports and avoid harsh language and censure. A formal decision was not the best option. Israel's absence from the Committee's deliberations was symptomatic of the psychological barrier between that country and the United Nations. The Committee as an impartial and non-political body should help to break down that barrier, encourage dialogue and continue to request additional information on the massacre at Hebron and on other matters related to the implementation of the Convention.

43. The CHAIRMAN said that, in deciding how best to communicate the Committee's views to the Government of Israel, the Committee should consider the advisability of the Chairman addressing a letter to the Foreign Minister of Israel.

44. The Committee had concluded the first part of its consideration of the additional information requested from Israel.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2) (continued)

45. The CHAIRMAN invited the Committee to resume its consideration of the request by the representative of Croatia that submission of the additional information it had been asked to provide should be deferred to the next session of the Committee.

46. Mr. YUTZIS said that, in his view, the Committee should respond favourably to the request, although it would be preferable to defer a decision until the report of the mission to Croatia had been discussed, since the situation in Croatia formed part of overall developments in the former Yugoslavia. It should be remembered that Croatia had submitted an excellent first report and had also taken the step of requesting an advisory mission. It had made every effort to ensure the success of the mission and was prepared to see it continue.

47. Mr. FERRERO COSTA endorsed those views.

48. Mr. WOLFRUM said he was not sure that the situation in Croatia was sufficiently satisfactory for the discussion to be deferred and thought the item should be retained on the agenda. Requests by a country for deferral of consideration of its situation had been refused in the past.

49. The CHAIRMAN said that the situation in Croatia would be considered in any event when the report of the mission to Croatia was before the Committee. That discussion would probably be very complete and it might be unnecessary to consider additional information from the country.

50. Mr. DIACONU said that the Committee should not deprive itself of the possibility of calling on Croatia to provide additional information at the present session should that be considered useful.

51. Mr. YUTZIS said that Croatia was not asking for discussion of its situation to be removed from the agenda of the present session, merely that submission of additional information should be delayed for two months.

52. The CHAIRMAN said Croatia had indicated that it was unable to supply additional information in writing at the present session, as it required more time to clarify certain points, but could do so at the next session. The representative of Croatia was, however, prepared to appear before the Committee at its present session, if needed.

53. Mr. RECHETOV, endorsing the views expressed by Mr. Wolfrum and Mr. Diaconu, said that there was nothing to prevent the representative of Croatia from giving an oral reply to the Committee's questions even if a written report could not be provided.

54. Mr. ABOUL-NASR said that in the past, requests by countries for deferral of consideration of their reports had been accepted; he did not see why Croatia's could not therefore be granted.

55. Mr. BANTON said that, as shown in its previous report to the General Assembly, the Committee considered that the relationship between the Government of Croatia and events in Bosnia and Herzegovina gave cause for great concern. It was therefore appropriate that the request for additional information should be maintained.

56. The CHAIRMAN suggested that after discussion of the report of the mission to Croatia, the Committee should decide whether it wished to call on the representative of Croatia for further information.

57. It was so agreed.

The public part of the meeting rose at 12.10 p.m.